

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JOHNNY CYRUS,	:	No. 3:06-CV-02265
	:	
Plaintiff,	:	(Judge McClure)
	:	
v.	:	(Magistrate Judge Blewitt)
	:	
KAREN F. HOGSTEN, et al.,	:	
	:	
Defendants.	:	

ORDER

January 9, 2007

BACKGROUND:

Plaintiff is an inmate at the Federal Correctional Institution at Allenwood, White Deer, Pennsylvania (“FCI-Allenwood”). On November 21, 2006, plaintiff filed pro se this instant civil rights action, alleging a First Amendment retaliation claim and Eighth Amendment cruel and unusual punishment claim against defendants. Plaintiff claims that defendant Correction Officer Garrison physically assaulted him, threatened him, and trashed his personal property in retaliation for plaintiff’s filing of several lawsuits against Garrison’s fellow correction officers. Plaintiff also alleges that Garrison took away all his medication. Finally, he alleges that he sent defendant Warden Hogsten a BP-9 administrative remedy form and a request to staff form. He makes no claim for relief.

This matter was initially referred to United States Magistrate Judge Thomas M. Blewitt.

On December 15, 2006, the magistrate judge issued his thorough thirteen page report and recommendation. The magistrate judge recommends that the complaint be dismissed as against defendant Warden Hogsten because plaintiff fails to allege Hogsten had any personal involvement with any alleged misconduct. The magistrate judge does recommend, however, that plaintiff be allowed to proceed against defendant Garrison concerning plaintiff's First Amendment retaliation claim and his Eighth Amendment excessive force claim. Finally, the magistrate judge recommends that this case be remanded to him for further proceedings.

No objections have been filed to the magistrate judge's report and recommendation.

DISCUSSION:

A district court reviews de novo those portions of a magistrate judge's report and recommendation to which a party objects. L.R. 72.3. The court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." Id.

We will adopt the magistrate judge's report in full. We agree with the

magistrate judge that plaintiff fails to assert any viable claim against defendant Hogsten. We also agree that plaintiff does allege a First Amendment and Eighth Amendment claim against defendant Garrison. For purposes of judicial economy, we will not rehash the sound reasoning used by the magistrate judge in reaching these conclusions.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The court adopts in full the magistrate judge's report and recommendation.
(Rec. Doc. No. 6).
2. The complaint is dismissed as against defendant Warden Hogsten.
3. The case is remanded to the magistrate judge for further proceedings.

s/ James F. McClure, Jr.
James F. McClure, Jr.
United States District Judge